Sovereign Councils of the Hawaiian Homelands Assembly

February 3, 2017

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Re: *Response to FCC's Public Notice Dated December 20, 2016, seeking comments from interested parties concerning WC Docket No. 10-90*

Aloha Ms. Dortch:

My name is Robin Puanani Danner, and I am the elected chairman of the Sovereign Councils of the Hawaiian Homeland Assembly (SCHHA), the oldest and largest organization unifying Hawaiian Home Lands (HHL) community leaders and self-governing homestead associations throughout the state of Hawaii. The SCHHA represents the interests of native Hawaiians eligible under the federal Hawaiian Homes Commission Act (HHCA) of 1921, who are the actual recipients of services provided by Sandwich Isles Communications (SIC) and are the de facto beneficiaries of the FCC's USF and NECA support programs for Hawaiian Home Lands (HHC).

Mahalo for the opportunity to submit comments on the above referenced Public Notice. We have also reviewed the FCC related Order dated December 20, 2016 outlining the directives by the Commission based on the extensive investigation over 9 months conducted by the Universal Service Administrative Company (USAC). Based on the USAC report, Sandwich Isles Communications (SIC) responded to 350 inquiries and provided 3,200 files.

Our SCHHA executive leadership, all of which are HHCA beneficiaries from the islands of Kauai, Oahu, Maui, Molokai and Hawaii Island on the land, and on the waiting list for a land award, interprets the 54-page Order to address the following major issues:

1. To protect USF from waste, fraud and abuse, particularly in circumstances surrounding universal service high-cost support received by SIC from 2002-2015.

2. To determine whether to lift or modify the FCC current suspension of SIC high-cost support.

3. Directs a public notice for public comment, and to review public comment on why the FCC should not terminate the 2005 waiver granted to SIC to be treated as an incumbent local exchange carrier serving HHL for the purposes of receiving high-cost universal service support and thereby making it ineligible to continue receiving such support.

4. Directs the recovery of $27,270,390 from SIC in overpayments for USF high-cost support for the period, 2002-2015. This is on average, $1,947,885 for each of the 14 years, out of $249,227,589 in total USF high-cost support received by SIC since 2002. The overpayment amount determined by USAC is 11% of the total USF support received by SIC over the 14-year period, and has the potential of dropping to $4,000,000 representing 1.6% if the data presented by GNVW Consulting is determined to have merit.

5. Directs all management fees paid by or to be paid by SIC to its parent corporation, Waimana that are above the average amount paid by comparable entities for the period 2002-2015 to be disallowed.

Establishes the comparable level at $1,237,355 for 2012, 2013 and 2014, and directs calculations to be made for all other years between 2002 and 2015. Further, directs action to recover any management fees paid to Waimana for the entire period that exceed the average comparable to entities of similar size and function.

6. Directs the resubmission by SIC of its cost studies and high-cost forms for costs incurred in 2013, 2014 and 2015 to determine the proper amount of high-cost support for 2015, 2016 and 2017.

7. Directs USAC to deny any claims from SIC for executive staff bonus awards or donations or sponsorships in any future cost study used to calculate high cost payments.

8. Directs an investigation of SIC affiliate transaction costs incurred in calendar year 2016 to determine compliance with affiliate rules to ensure expenses paid to SIC affiliates are the lower of fair market value or fully distributed costs.

We understand the breakdown of the $27,270,390 to be recovered from SIC is as follows:

Listing of Findings Resulting in Overpayment Amount	
III.A. Misclassification of Category 1 Costs	$26,320,270
III.B.1 Unreasonable Affiliate Transactions & Compliance*	N/A
III.B.2. Inflated and Improper Waimana Management Fees**	TBD
III.B.3a. Improper Allocation of ClearCom Water Mains Lease	$711,355
III.B.3b. Temporary Office Space versus Downtown Property	($1,445)
III.B.4 Ineligible Corporate Bonuses and Activities	$175,090
III.C.1 Misclassification of Accumulated Amortization (taxes)	$65,120
Amount of Overpayments Over 14 Years	**$27,270,390**
*Affiliate and/or Related Party transactions are allowed, as long as costs are the lower of fair market value or fully distributed cost, where the costs are only for the provision, maintenance and upgrading of facilities and services.	
**USAC reported that it was unable to come to a determination regarding the validity of Waimana management fees, that SIC did not submit details on how invoices related to SIC obligations and FCC rules to use support for the provision, maintenance and upgrading of facilities and services.	
Listing of Overpayment Amounts by Year	
2004	($183,062)
2005	$711,449
2006	$1,801,244
2007	$2,741,905
2008	$3,828,619
2009	$4,937,666
2010	$4,772,365
2011	$3,420,021
2012	$3,362,901
2013	$1,554,370
2014	$221,681
2015	$101,231
Total Overpayment Amounts	**$27,270,390**

In addition to the above findings by USAC for funds to recover, the agency noted two significant areas of concern that increase the risk for waste, fraud and abuse as:

1. Complexity of the Waimana, SIC and affiliate Corporate Structure and;
2. Transactions Involving Relatives to Albert Hee.

The SCHHA recognizes that these two significant concerns are directly related to the conviction in the personal federal tax case of Albert Hee, wherein $4,063,294 in benefit to Albert Hee and/or his family members from his Waimana business (the parent corporation of SIC) was not reported as income for income tax purposes, and resulted in federal taxes due of $425,988. As such, Albert Hee is serving a 46-month prison sentence.

We further interpret that the FCC Order based on the USAC findings, along with its request for comment and the FCC directive to recover $27,270,390 from SIC is to recover overpayments of USF support over the last 14 years, and to guard against SIC funds received for the purpose of serving Hawaiian Home Land beneficiaries as defined under the 1921 HHCA, from being spent on out-of-compliant affiliate costs, or excessive management fees charged to SIC by Waimana where Albert Hee failed to pay federal income tax on taxable benefits received from Waimana.

The SCHHA has for over 30 years, dedicated itself to the protection and exercise of the rights of HHCA beneficiaries under the federal HHCA. The dedication of USF funds in 2002, was not only the proper application of USF toward the telecommunications needs of our rural lands that were ignored for literally decades and for which the USF was created, but also the fulfillment of the federal government promise to the native Hawaiian people embodied in the HHCA at its 1921 enactment, and again in 1959, when the United States Congress enacted the Hawaii Admissions Act. Both of these laws acknowledged the trust relationship and duty to the indigenous people of first, the U.S. Territory of Hawaii, and then the 50th State.

Our first and foremost concern regarding WC Docket 10-90 is for the federal government and its agencies, including and especially the FCC together with the State of Hawaii and its agencies, including the Hawaii Public Utilities Commission and the Department of Hawaiian Home Lands (DHHL), all of which have solemn duties to our people under the HHCA and the Admissions Act, to address the USAC findings to position SIC to be reformed to continue to serve our beneficiaries, to continue to fulfill the original network plan approved in 2001, of which so many of our leaders participated in the development of that plan.

SIC to the SCHHA, is not Albert Hee. SIC to the SCHHA, is the corporate telecommunications firm that holds the assets and hopes of thousands of subscribers, but more importantly, the 29,000 on the waiting list, for which the 2001 network plan was dedicated.

Moreover, SIC, as a Telco, as a local company, after more than 50 years of being ignored by others, has consistently been present inside our rural homestead areas, has reached out to engage our people, starting with the original network plan, and is without question, the only Telco with the unique expertise and understanding of the complexity of the HHCA and our relationship with our federal government. The promise of the federal government under the 1921 HHCA, the Hawaiian Home Lands Recovery Act of 1996 and the 1959 Hawaii Admissions Act, requires an astute understanding of our eligibility as rural citizens, but also the federal Government's trusteeship to native Hawaiians. It would be highly detrimental to us as HHCA beneficiaries, to start over, to begin again, to cast aside that which we have waited for, for decades, without directing effort to reform SIC to deliver on its mission.

We feel especially strong that the FCC should focus on reforms first, over the easier path of simply disqualifying SIC, and therefore condemning us as HHCA beneficiary families, by making us ineligible for USF support. Albert Hee is not the HHCA. Albert Hee is not our land trust. We, the 10,000 families on the land, and the 29,000 families waiting for lands and access to telecommunication infrastructure, are the HHCA, are the land trust, and most importantly, we embody the federal trust that the FCC, and every other federal agency must have a relationship with due to the HHCA, the HHLRA and the Admissions Act.

We call for reforms at SIC that the SCHHA would like the opportunity to negotiate in a legally binding agreement between SIC and the SCHHA as follows:

- **A.** A mutually agreed prohibition of any Hee immediate family member from being employed by SIC so long as SIC is an ETC receiving USF support based on our land trust (no prohibition on serving on its board of directors);
- **B.** A mutually agreed requirement that at least one third of the SIC board of directors must be HHCA beneficiaries proposed by SIC but vetted and approved by the SCHHA with expertise in finance, business, accounting or telecommunication regulations;
- **C.** A mutually agreed requirement that SIC produce an Annual HHCA Beneficiary Telecommunications Report that includes the amount of USF support for the year and to date, the number of loops installed, the number of subscribers added, a description of every affiliate transaction during the year and how it complies to the affiliate rule, and a progress status against the original 2001 network plan.
- **D.** A mutually agreed requirement that SIC convenes an annual briefing and consultation with HHCA Beneficiaries on the Annual HHCA Beneficiary Telecommunications Report with the date, location and time published not less than 60 days from the date of the convening in a major newspaper, and notification to the SCHHA and the Association of Hawaiians for Homestead Lands (AHHL) representing the interests of waitlist native Hawaiians.

Our reform priorities are grounded in the interest of addressing the well-being of HHCA beneficiaries, and the goals expressed by the FCC in protecting USF from waste, fraud and abuse. By no means are our reform priorities meant to disparage or judge anyone. We are all ohana, all one humanity.

In support of an opportunity to negotiate meaningful reforms at SIC, we request the FCC consider:

- **A.** Full payment of the recovery amount of $950,120 from SIC over a period of time that does not financially destroy the firm, and a deferral of the recovery amount of $26,320,270, until a full assessment of the affidavit by GVNW Consulting is completed by USAC and the FCC, as it relates to the categorization of costs by other Telcos and a firm determination that the SIC categorization methodology used is unique to SIC.
- **B.** As HHCA beneficiaries, with 3rd, 4th and 5th generation families that have lived on Hawaiian Home Lands, engaged with DHHL for most of our lives, and indeed waited for the ability to access meaningful telecommunication services, we know well the failures of DHHL to fulfill projections it makes about lot development. SIC however, we are sure, was unaware of this decades-long government failure when it began its journey.

  Your order cited a 2002 DHHL letter describing its government produced list of 28 commercial projects and requested telecommunication projects to support them, wherein the failure of State Government to deliver on the projects listed is framed as “speculation development” by SIC. We could not disagree more. DHHL is governed by a Governor appointed director, and a Governor appointed 9-member Commission. The reality of complying with developing telecommunication infrastructure as CIP dollars are being spent by the State for subdivisions, is a prudent, cost saving approach - definitely not “speculation”.

  The misclassification of cost categories described in the order punishes SIC for acting on missives from DHHL, a state agency, on its plans to build subdivisions to move our people off the waitlist into homes, and then DHHL failing to even come close, is an all too familiar experience for us as HHCA beneficiaries. We embrace the prudence of FCC rules that inhibits overly optimistic telecommunication infrastructure development with USF support. We know the network plan well, we helped create it between the years of 1997 and 2001, and it is a plan based on the realities of the difficult lands issued to us under the HHCA, as well as the data provided by the State of Hawaii, DHHL.

We request that together with the review of the GNVW Consulting affidavit, the comparison of cost allocations by SIC against other similar Telcos, that the FCC review the connection between the 1959 Hawaii Admissions Act, wherein the federal government delegated administrative responsibilities to State government to manage Hawaiian Home Lands. In essence, the State of Hawaii is the delegated representative of the Federal government as it relates to Hawaiian Home Lands, and the State's failures should be considered by the FCC as such. This is the single largest reason why SIC has been stifled to serve the 29,000 people on the waitlist, not unbridled speculation. In short, DHHL promised SIC, as it promised our people on the waitlist, that it would spend our trust funds managed by the State, to put our people on the land. They built subdivisions, leaving our people on the waitlist without access to homes.

The fact that 96% of the total amount of the ordered recovery amount is for misclassification that includes commentary on infrastructure without homes and active subscribers, warrants a deferral to give a more in-depth review of all aspects of the costs and categories in question, and to consider potential requirements that FCC can impose to hold its delegated State government to produce more definitive lot development data or to put in place, assurances by DHHL to the FCC, to HHCA beneficiaries and to SIC, regarding real data on real strategies that result in vertical construction.

In 2015 the SCHHA became aware of the media stories regarding the owner of Waimana, and the impact of his personal tax case to SIC. Since that time, our concerns for the continuity of existing service, for the thousands waiting on the waitlist to move into a home and receive service, for the original goals of USF, for the 2001 network plan we worked so hard to produce with DHHL and SIC, have only heightened our fears. And today, as described in the Public Notice requesting comment, our people are faced with the possibility of being denied access to USF support althogether, the very same support that built the Midwest, and the rural farming towns across the country.

We know first hand, what waiting, starting over, restarting means to our community. We know what a decision of ineligibility for SIC means to us. We know what a replacement Telco not knowledgeable about the HHCA under a potential sale of SIC will mean to us that may or may not seek the reestablishment of USF for our lands or even be required to fulfill the terms of the exclusive license that advances the interest of HHCA beneficiaries. We ask the FCC to consider our voices and our knowledge. To consider the original and still completely relevant reason the USF exists.

The focus feels like after all we have been through as HHCA beneficiaries, the question by the federal government is how to dispense of the directives and actions of Waimana and one man. We want the focus by our government to be on the people of these trust lands known as Hawaiian Home Lands. USF support did not come to our lands because SIC was incorporated. USF support came to our lands because we existed, as people, as families, as beneficiaries of a federal trust. Today, in 2017, we are still here. We are still the reason we must find the best path forward, not necessarily the most expedient for others.

We ask for your help, for an opportunity to achieve the necessary and meaningful reforms at SIC, the Telco. To bring accountability and transparency by SIC to HHCA beneficiaries, to structure the USF support that truly belongs to the people in such a way that we have a chance to fulfill the impact of the

USF on citizens like us in our rural, hard to serve areas, established by the Congress in 1921. The situation we have been thrusted into as a result of the decisions made by Waimana, has made clear, that we must be at the table, we must engage more directly with SIC and the FCC, never again to delegate the manner in which our rights are met. SIC as a Telco, is still a good vehicle, has the right bones, good and hard working line staff, with the necessary telecommunication knowledge and land trust knowledge worthy of reforms that protect our rights to see it succeed in delivering on the 2001 network plan.

In closing, the SCHHA was heartened by the statement in the Order that stated – "*the actions of the FCC does not diminish in any way, its commitment to provide uninterrupted telecommunications service for customers on the HHL. Further that as the FCC considers issues going forward, its overriding objective is to ensure that the people of the HHL continue to be served*." We have 29,000 native Hawaiians on the waitlist that place hope in that statement.

Thank you for the opportunity to provide comment of this matter of serious interest to the SCHHA and our people.

Sincerely,

Robin Puanani Danner
SCHHA Chairman

CC: SCHHA Executive Council and Homestead Association Members
SCHHA Chairman Emeritus, Kamaki Kanahele